

**OPENING STATEMENT OF REP. EDWARD J. MARKEY (D-MA)
COMMERCE COMMITTEE MARKUP OF H.R. 4321,
THE FINANCIAL INFORMATION PRIVACY ACT OF 1998"**

SEPTEMBER 24 1998

Thank you, Mr. Chairman. The bill we are marking up today was originally reported out of the House Banking Committee. We have not had any hearings on this bill in the Commerce Committee, which I regret, because I believe that it might have been useful for us to examine this bill, as well as other alternatives, such as the two financial privacy bills I introduced in August, H.R. 4478 and H.R. 4479. But I understand that we have been given a very short sequential referral on this bill, and as a result have had to circumvent regular order in this matter to meet the unreasonable artificial deadline that has been imposed on us. I also personally appreciate the Chairman's willingness to work with the Gentleman from Michigan (Mr. Dingell), the Gentleman from New York (Mr. Manton), and myself to make a number of improvements in the bill which are reflected in the Substitute that you will be offering shortly.

Now, the underlying legislative product before us today, like much of the work of our good friends across the hallway, pretends to do much while actually accomplishing quite little. While this bill is titled the "Financial Information Privacy Act of 1998," it doesn't squarely address the principal threat to the financial privacy of Americans - mergers in the financial services industry and technological developments that are facilitating sharing of consumer personal information. Instead, this bill focuses on a narrower problem - and one which is already illegal under the wire fraud laws, the mail fraud laws, and the FTC Act. It is a practice known as "pre-texting," in which detective agencies or data mining firms contact banks, brokerages, or others pretending to be somebody in order to obtain confidential financial information about that person.

When some private eye Jim Rockford that James Gardner played in the old TV show the Rockford Files pretends to be you or me, this bill provides another count for the indictment against him. That's marginally useful but it doesn't get at the real financial privacy crisis in this country. The privacy crisis isn't caused by the Jim Rockfords of this world but by other, darker characters. You all remember Mr. Potter, the hard-hearted old banker in the movie classic *It's a Wonderful Life*? Well, today's Mr. Potters are busy gathering all the consumer information about folks in Bedford Falls and every other town and city for cross-marketing and other purposes. If we are not very careful, we may soon be faced with what amounts to a Privacy Pottersville, a digital disutopia in which financial services firms amass massive computer databases about our assets and debts, our credit card purchases or checks, our brokerage accounts or mutual funds, our insurance coverage and medical history, and then buy and sell this information like any other commodity. Right now, there are few laws protecting Americans from such corporate invasions into their personal privacy and that is the problem we need to be addressing here today.

Another problem with the bill reported out of the Banking Committee is a peculiar provision which appears in the civil liability section. Under this bill, consumers are granted the right to sue Jim Rockford if he pretends to be them in order to obtain information about their financial affairs, but Mr. Potter is exempt from being sued for doing exactly the same thing. That's right, if a detective agency or data mining firm engages in pretexting, this bill lets you sue them. But if a bank, a brokerage firm, or an insurance company does exactly the same thing, you are denied the right to sue. Now, what is so special about the financial services industry that they should be above the law? Why shouldn't consumers have the same rights and remedies regardless of who invades their privacy? I appreciate your efforts, Mr. Chairman, to try to address this problem by providing explicit authority to the banking agencies to provide for restitution to harmed customers. This is a positive step and if I had more confidence in the banking regulators I might agree that we could stop here. But the banking regulators have in the past

amply demonstrated that they are more concerned with bank safety and soundness than consumer protection. Given that reality, I think we should eliminate the carve out for financial institutions.

I intend to offer amendments at today's markup to address both of these shortcomings with the bill sent over to us by the Banking Committee. I urge my colleagues to support these amendments.